IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.164 DB of 2004
Date of decision: 4th December, 2007

Kumbh Dass

…Appellant

Versus

State of Punjab

…Respondent

CORAM: HON'BLE MR.JUSTICE MEHTAB S.GILL
HON'BLE MR.JUSTICE HARBANS LAL

Present: Mr.Nandan Jindal, Advocate
for the appellant.

Mr.AS Jatana, Addl. Advocate General, Punjab

Harbans Lal, J.

This appeal has been directed against the judgment and order of sentence dated 19th December, 2003 rendered by the Court of learned Additional Sessions Judge, Sangrur, whereby he convicted and sentenced the appellant Kumbh Dass to undergo imprisonment for life and to pay a fine of Rs.10,000/- or in default thereof to further undergo rigorous imprisonment for one year under Section 302 of the Indian Penal Code whereas his co-accused Nirmal Dass has been acquitted of the charged offence.

The factual matrix of this case is that on 31st July, 2000, Tarsem Lal son of Jagan Nath, resident of village Ghanaur Jattan, Police Station Dirba made a statement Ex.PH before Baljinder Singh ASI in the terms that

he is the resident of the address given above and is doing agriculture work. A tilla (elevated land) of Baba Mast Ram (Bansari Wala) exists in their fields known as Tibbiawala Khet in which Kumbh Dass Chela Charan Dass was rendering the services as Sewadar. His Dadaguru Avtar Muni Chela Sambhu Muni Mahant Tilla Dakala (Patiala) had been staying with him for the last so many days. On the night (referring to 30th July, 2000) at about 11.30 PM, he and Gurdial Singh @ Roda son of Bhan Singh, Jheour, resident of Ghanour Jattan were irrigating the paddy crop in the aforementioned fields. They heard shrieks from the side of Tilla. When they saw towards the Tilla, Kumbh Dass, who was holding a Ghop in his hand, was giving beatings to Dadaguru Avtar Muni at the place of Dhunna where an electric bulb was glowing. Within their sight, Kumbh Dass dealt a Ghop blow on the right leg of Avtar Muni, who fell down on the ground. Kumbh Dass wielded his Ghop blow towards Avtar Muni, who raised his right arm toward off the blow, which rested on the wrist of his right arm. They raised alarm of "Na-maro, Na-maro" (Do not kill, Do not kill). Within their view, Kumbh Dass thrusted the pointed edge of his Ghop on the upper lip of Avtar Muni. On alarm being raised by them, Kumbh Dass decamped from the spot with his Ghop. While in injured condition, Avtar Muni narrated to them that Kumbh Dass had been demanding a big Tilla (Dera) from him and on his refusal to do so, beating has been given to him by Kumbh Dass. He (Tarsem Lal) left Gurdial Singh near Avtar Muni and went to Baljinder Singh, President of the village Club and narrated the entire occurrence. After arranging the vehicle, they reached at the Tilla and found that Avtar

Muni had succumbed to the injuries. When they were proceeding to the police post to give information, they came across Baljinder Singh ASI, Incharge of the Police Post Sular Gharat on the bridge of Canal Sular Gharat. He made his endorsement, sent the statement to the Police Station, where on its basis, formal FIR was recorded. Thereafter, ASI Baljinder Singh went to the scene of crime, prepared the inquest report, sent the dead body for postmortem examination, lifted the blood stained earth, one bed sheet from the spot, prepared a rough site plan, recorded the statements of Kaka Singh and Jeet Singh and on the basis of their statements, added the offence under Section 120-B IPC against Nirmal Dass accused. The clothes which were removed from the dead body were taken into possession on being produced by Constable Kashmira Singh after postmortem examination. On return to the Police Station, he deposited the case property with MHC. He arrested the accused Kumbh Dass on 4th August, 2000 and Nirmal Dass on 21st August, 2000. After completion of investigation, the charge-sheet was laid in the Court of Committing Magistrate.

On commitment, accused Kumbh Dass and Nirmal Dass were charged under Section 120-B IPC. Kumbh Dass was also charged under Section 302 IPC, whereas his co-accused Nirmal Dass was charged under Section 302/34 IPC. They did not plead guilty and claimed trial.

In order to substantiate its allegations, prosecution has examined PW1 Dr.Parmod Kumar, PW2 Constable Balwinder Singh, PW3 Harbans Singh, Patwari Halqa, PW4 Kamaljit Sharma, PW5 Jit Singh, PW6 Kaka Singh, PW7 Gurdial Singh, PW8 Tarsem Lal complainant, PW9 HC

Bhupinder Singh, PW10 HC Vikramjit Singh, PW11 ASI Baljinder Singh, Investigating Officer and closed its evidence by tendering Ex.PX and Ex.PY reports of the Forensic Science Laboratory. On close of the prosecution evidence, when examined under Section 313 Cr.P.C., accused Kumbh Dass alias Jagir Dass alias Bholla denied all the incriminating circumstances appearing in the prosecution evidence against him. He has come up with the plea that he is innocent and that the case is false and that Tarsem Lal wanted to grab the land of the Dera. His statutory statement was recorded on 1st December, 2003 on which date, his co-accused Nirmal Dass was acquitted by the learned trial Court "by making the observations in the order sheet dated 1st December, 2003 that there is no evidence at all against the accused Nirmal Dass and therefore, recording his statement under Section 313 Cr.P.C. is dispensed with and he is acquitted at this stage. Kumbh Dass examined Mohinder Singh DW1 in defence.

We have heard Mr.Nandan Jindal, Advocate representing the appellant and Mr. AS Jatana, Additional Advocate General, Punjab at a prolix length and have gone through the evidence on record with due care and circumspection.

The evidence tendered by Dr.Parmod Kumar PW1 reads as under:

> "On 31.7.2000, I was posted as Medical Officer at Civil Hospital, Sunam. On that day at 2.30 PM, I conducted the postmortem on the body of Avtar Muni Chela Shambu Mani Sadhu Mahant by Caste, r/o Tilla

V.Dakala, District Patiala, aged about 75 years. The body was brought by C Kashmir Singh no.377, Police Station Dirba and identified by Gurdial Singh @ Roda s/o Bhan Singh, r/o Ghanaur Jattan and Dhanna Singh s/o Gurbakhsh Singh, r/o Ghanaur Jattan. According to the information furnished by the police, the person had died due to injuries. The length of body was 5' 7" and one Chadra was worn. Rigour mortis was present in all the four limbs. The following injuries were found on the person of Avtar Muni:-

1. An abraded swelling 5 cm x 2½ cm present in the centre of forehead and root of nose. Clotted blood present around the abrasion. On dissection haematoma present in the **subcutaneous** tissue. Crack fracture of frontal bone seen with lacerated of meninges and subdural haematoma was present.
2. A cruciate lacerated wound 3 cm x 2 cm present on upper lip in its centre. Wound was about 5 cm deep going upward and backward piericing the pallate upper two incisers not present in place with clotted blood present in the sockets of teeth. Clotted blood was present in and around the wound.

3. A lacerated wound 3 cm x 1 cm present on anterior aspect of right leg 10 cm above the ankle. Underlying bones were fractured. Clotted blood was present in and around the wound. Haematoma was present in the tissues.

4. A diffuse swelling was present on the right wrist. There was fracture of lower and of radius. Haematoma was present in the tissues.

5. Small reddish abrasions were present on the right scapular region, left thigh and left chest. On dissection underlying tissues were normal.

In the chest, all the organs were found to be normal and in abdomen stomach contained 100 ml. gastric juices. Small intestines contained intestinal juices and chyme. Large intestines contained faecal matter and gases. All organs of abdomen were normal.

The death in this case, in my opinion, was due to shock and hemorrhage as a result of multiple injuries. The injuries described were ante mortem in nature and were sufficient to cause death in the ordinary course of nature in this case.

The following were handed over to the police:-

1. Reconstituted dead body after post mortem,
2. Carbon copy of post mortem report,
3. Police papers numbering from 1 to 14, duly signed by me.
4. Belongings of the deceased in a sealed pack sealed at one place with seal 'PG'.
5. Sample seal of 'PG'.

The probable time between injuries and death was immediate and probable time between death and post mortem was within 24 hours. Ex.PA is the correct carbon copy of post mortem report prepared in the same process. Ex.PA/1 and Ex.PA/2 are the pictorial diagrams showing the seats of injuries. I conducted post mortem examination on Police request Ex.PB marked to me by Dr.R.S.Singla, S.M.O. Civil Hospital, Sunam vide his endorsement Ex.PB/1. I initialed all the police papers including inquest report Ex.PC. All the injuries could have been caused with Ghop if used in different manners. Injury no.2 could have been the result of ghop blow if used in a thrusting manner. (At this stage the sealed parcel duly sealed with my seal and sealed intact has been opened. I have seen Chadra Ex.P1 which was

removed from the dead body.)

PW8 Tarsem Lal, complainant has stated as under:

"There is a Dera in our village which is called "TILLA" of Baba Mast Ram Bansari Wala. On 30.7.2000, accused Kumb Dass Chela Charan Dass was residing there as the SEWADAR of the Dera. His DADA GURU Avtar Muni had come to meet him from Dera Dakala, P.S.Sadar, Patiala about 2/3 days prior to this occurrence.

On 30.7.2000 at about 11.30 PM, I alongwith Gurdial Singh @ Roda were present in our field and were irrigating/watering our paddy crop there. We heard the cries from the side of "TILLA". We saw towards the "TILLA". An electric bulb was on at the "TILLA". Accused Kumbh Dass present in the court had a GHOP in his hand and he was beating his Dada Guru Avtar Muni. Within our sight, the accused Kumbh Dass gave a Ghop blow on the right leg of Avtar Muni, who fell down on the ground. To defend himself, from further injuries, Avtar Muni raised his right arm and suffered a second Ghop blow on his right wrist. We raised "RAULA NA MAR, NA MAR." The accused aforesaid gave a third Ghop blow thrust type on the lips of Avtar Muni. We went near him and saw that Avtar Muni had suffered a blow on his forehead also. On the "RAULA"

raised by us, the accused ran away from the place of occurrence alongwith the weapon of offence namely "GHOP." Injured Avtar Muni told me that Kumbh Dass wanted a bigger dera from me and on my refusal to allot him a bigger dera, he had injured him. I left Gurdial Singh behind to guard injured Avtar Muni and myself went to Baljinder Singh President of our village club, and narrated to him the entire occurrence. We reached at the dera on a scooter and before we reached there, Avtar Muni was dead. I alongwith Baljinder Singh were going to inform the police regarding the occurrence when the police met us at Sular Gharat Naka. My statement was recorded by police which was read over and explained to me and in token of its correctness, I signed it. My police statement is Ex.PH."

Mr.Nandan Jindal, Advocate on behalf of the appellant has strenuously urged before us that as per medical evidence, larger intestine contained faecal matter and gases. The deceased might have taken last meals in between 8 PM to 9 PM. Normally, it takes about 4 to 6 hours to digest the food. Thus, the digestion process was to be over by 3.00 AM. If so, there could be no faecal matter by the time of occurrence. Consequently, the alleged time of occurrence is falsified. The occurrence would have taken place in the early hours. These circumstances, when put together leads to a reasonable and legitimate conclusion that the occurrence was not witnessed

by Tarsem Lal PW. To buttress this stance, he has sought to place abundant reliance upon the observations made in re:**Surinder Singh vs. State of Punjab**, 1989 Supp. (2) Supreme Court Cases 21; wherein it has been observed that the medical evidence regarding the time of death and the presence of semi-digested food in the stomach of Manjit Singh throws considerable doubt about the prosecution case that Manjit Singh had been attacked at about 3 or 4 a.m.

To over come this submission, Mr. Jatana maintained that this argument is nullified by the cross-examination of the abovementioned Dr.Parmod Kumar. It would be apparent from the stated cross-examination that rigour mortis was present in all the four limbs and the same was in fully setting stage and it starts after two hours of death and sets completely upto 12 hours, remains for 12 hours and passes off in 12 hours. On counting backward from 2.30 PM on 31st July, 2000 upto 11.30 PM on 30th July, 2000, it reckons that the occurrence did occur at the time set up by the prosecution. The common-men experience lends credence to the fact that in generality the villagers and the saints like the deceased, take their last meals before 8 PM in routine. The duration of time to digest depends upon the contents of food consumed. Ordinarily, it takes about 2 to 3 hours to digest simple food, whereas the spiced food, meat, liquor takes about 4 to 6 hours. The deceased being an austere, Saint would have taken his last means well before 8.00 PM. More so, the timings of last meals is not elicited from Tarsem Lal PW or anyone else. So, we are to go by general presumption. As per the facts of **Surinder Singh's** case (supra) at about 9/ 10 p.m. on

May 8, 1975, the appellant and deceased Manjit Singh, who were both aged about 18 years had quarrelled while taking curd and while in a drunken mood near the shop of one Mohinder Pal in Kharasanwali Gali, Amritsar. It was a drunken brawl. Thus, the facts of the instant case cannot be equated with **Surinder Singh's** case (supra).

It has been further sought to be argued by Mr. Jindal that there is an unexplained delay of as many as 4 hours in lodging the FIR. During this period due deliberation and confabulations might have been made to rope in the accused. To add further to it, the special report (FIR) reached the hands of the Illaqa Magistrate of Police Station Dirba at 2 PM on 31st July, 2000, which further strengthens that the F.I.R. was not recorded at the stated time rather the same has been ante-timed. Mr. Jatana contended that the delay has been fully explained by Tarsem Lal PW. The delay in reaching of the special report in the hands of the Illaqa Magistrate is not attributable to the complainant party.

We have well considered the rival contentions. It is in Ex.PH that Tarsem Lal PW went to Baljinder Singh, President of the village Club by leaving Gurdial Singh near the dead body. They both arranged the vehicle and then they came to the place of occurrence. When they reached there, it was found that Avtar Muni has expired. It is in the cross-examination of Tarsem Lal PW that firstly I went to the house of Baljinder Singh, President; that his house comes first when we enter the village; that he told me to arrange one two more persons from the village and in the meantime, he got ready; that we reached back at Dera at about 1.00 AM

(midnight); that 20/25 persons reached at the Dera almost simultaneously with us; that we had got made announcement in village over Gurudwara loud speaker; that the police station is at a distance of 15/18 Kms. from our village and that the Naka point is at a distance of 15/16 Kms from the place of occurrence". These circumstances speak in themselves as to how the delay had crept in reporting the incidence to the police. A fortiori, the alleged delay hardly dilute the effect of prosecution evidence. The delay is not fatal to the prosecution case. As observed in paragraph 4 of the judgment in case **Tara Singh vs. State of Punjab,** 1991(2) Recent Criminal Reports (Crl.), 622, it has been observed as under:

> "4. It is well-settled that the delay in giving the F.I.R. by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all, it is but natural in these circumstances for them to take some time to

> go to the Police Station for giving the report. Of course the Supreme Court as well as High Courts have pointed out that in cases arising out of acute factions there is a tendency to implicate persons belonging to the opposite faction falsely. In order to avert the danger of convicting such innocent persons the courts are cautioned to scrutinise the evidence of such interested witnesses with greater care and caution and separate grain from the chaff after subjecting the evidence to a closer scrutiny and in doing so the contents of the F.I.R. also will have to be secrutinised carefully. However, unless there are indications of fabrication, the court cannot reject the prosecution version as given in the F.I.R. and later substantiated by the evidence merely on the grounds of delay. These are all matters for appreciation and much depends on the facts and circumstances of each case."

In case **Shaikh Ayub vs. State of Maharashtra,** 1998 Supreme Court Cases (Crl.) 1055; it has been held that merely because the FIR reached the Magistrate after three days, its genuineness cannot be doubted.

Further, in re: **Ravi Kumar vs. State of Punjab,** 2005(2) Recent Criminal Cases (Crl.), 213; it has been laid down by the Apex Court

that the delay in sending the FIR may by itself not render the whole of the case of the prosecution as doubtful, but shall put the court on guard to find out as to whether the version as stated in the Court was the same version as earlier reported in the FIR or was the result of deliberations involving some other persons, who were actually not involved in the commission of the crime. Here in this case, the version given in the court is not at variance with the one in the F.I.R. So, the contention raised by Mr. Jindal pales into insignificance.

Mr.Jindal further assailed the prosecution case by conteding that of course, as per the report Ex.PY of the Forensic Science Laboratory, the blood stained earth as well as the bed sheet recovered from the scene of crime were found stained with human blood but it is absolutely silent about the blood group and that being so, it ought to be excluded from the consideration. He has relied upon **Kansa Behera vs. State of Orissa,** (1987) 3 Supreme Court Cases 480.

This argument has no legs to stand upon. If there had been recovery of weapon of offence i.e. Ghop and/or of the blood stained clothes of the accused, only then this argument could have been raised.

In re: **Khujji alias Surendra Tiwari vs. State of Madhya Pradesh,** AIR 1991 Supreme Court, 1853; it has been observed in paragraph no.10 of the judgment that "we are, therefore, of the opinion that the aforesaid two decisions (referring to **Kansa Behera vs. State of Orissa,** (1987) 3 Supreme Court Cases 480 and **Surinder Singh vs. State of Punjab**, 1989 Supp. (2) Supreme Court Cases 21) turned on the peculiar

facts of each case and they do not lay down a general proposition that in the absence of determination of blood group the find of human blood on the weapon or garment of the accused is of no consequence. In view of these observations, this contention holds no water.

The next argument having been raised by Mr. Jindal is that the prosecution case rest upon the solitary statement of Tarsem Lal PW8, who in his cross-examination has stated that Kumbh Dass had already run away before our reaching there. This evidence leave no scope for doubt that the occurrence was not witnessed by him and thus, the entire prosecution case is demolished. This argument does not find favour with us. A careful reading of the examination-in-chief of this witness would reveal that he has given a graphic description of the occurrence and on evaluating the same, it stands abundantly established that the occurrence was witnessed by him. More so, his presence is probablised by the fact that he alongwith others was watering his paddy crop fields in the close proximity of the place of occurrence. He alongwith Gurdial Singh PW was attracted to the spot on hearing the shrieks of the deceased. It is in his cross-examination that "we reached at the spot within a minute as it was a distance of 10 karams again said it did not take more then five minutes." In his next breath, he has stated that when "he (Kumbh Dass) was running away, I saw his back also; that we did not chase him; that within my sight the accused gave two ghop blows". It is an accredited rule of evidence that while appreciating the statement of a witness, it is to be taken into consideration in its entirety and not by picking up a few sentences from here and there. In re: **Jakki @**

Selvaraj and another vs. State represented by IP, Coimbatore, 2007(2) Recent Criminal Reports (Crl.) 105, it has been observed that the doctrine of "Falsus in Uno, Falsus in omnibus (false in one thing, false in everything) is a dangerous one specially in India for if a whole body of the testimony was to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead-stop. An attempt has to be made to separate the grain from the chaff, truth from falsehood."

It is in the examination-in-chief of Tarsem Lal (sic) that "injured Avtar Muni told him that Kumbh Dass wanted a big Dera from him and on my refusal to allot him a bigger Dera, he has injured me". Obviously, the deceased narrated the occurrence including the motive. Assuming that the occurrence was not witnessed by him, nevertheless, the deceased had disclosed the name of the accused to him and further, this witness had seen the accused Kumbh Dass from back while fleeing from the spot.

In re: **Sukhar vs. State of Uttar Pradesh,** 2000 Criminal Law Journal, 29; in paragraph no.10 of the judgment, it has been observed as under:-

> "10. Applying the ratio of the aforesaid two cases to the evidence of PW 2, we have no hesitation to come to the conclusion that his statement indicating that the injured told him that his nephew has fired at him, would become admissible under Section 6 of the

> Evidence Act. We are, therefore, unable to accept the first submission of Ms.Goswami, learned counsel appearing for the appellant."

Ostensibly, the rule of Res-gestae has been applied in a similar situation. So, even in the light of this rule, the deposition of Tarsem Lal PW becomes admissible.

As ruled in re: **State of Rajasthan vs. Om Prakash,** 2007(3) Recent Criminal Reports (Crl.), 526; "the conviction can be based on testimony of sole witness without corroboration. There is no proposition of law to the effect that on the basis of solitary witness's evidence, conviction cannot be recorded and also that relatives' evidence needs corroboration".

In view of the above observations, the statement of Tarsem Lal PW being convincing and reliable requires no corroboration. Of course, Gurdial Singh PW7 did not lend support to the prosecution version, but in his cross-examination, he has stated in the following terms:

> "… It is correct that I had sent letter Ex.PG to the Hon'ble Court which bears my thumb impression. It is correct that in this letter I had written that Kumbh Dass and Nirmal Dass are accused and I am an eye witness in this case or that counsel for the accused in connivance with each other, obtained my signatures on blank paper and they do not want to examine me in the court or that I want to make a true deposition in this Hon'ble Court."

Still further, Kumbh Dass has examined Mohinder Singh as

DW1, who has also stated that "on 31st July, 2000 at about 3.00 AM, he was cultivating his land and he went to the Dera of Kumbh Dass at 3.30 AM to take tea. He (Kumbh Dass) served him (Mohinder Singh) tea and that till that time, no incident took place there. One thing is clear from this evidence that Kumbh Dass was present in the Dera on the night of occurrence. It is in the cross-examination of this witness that " I cannot say whether the accused had caused injuries and killed his Guru Avtar Muni on 30th July, 2000 at about 11.30 PM." Palpably, he has not denied this fact in a categoric manner. This further, strengthens the solemn affirmation of Tarsem Lal PW. More to the point, if the murder had been committed by someone else, Kumbh Dass being the Chela of the deceased might have come to the rescue of his Guru (deceased). He would have been the first person to take care of him.

No other material point has been urged or agitated by Mr. Jindal before us.

In view of the preceding discussion, we do not find any infirmity or illegality in the judgment under appeal. Consequently, the same is dismissed being meritless.

(Harbans Lal)
Judge

4th December, 2007 **(Mehtab S.Gill)**
gsv **Judge**

Whether to be referred to the Reporter ? **Yes/No**